judgment and unsatisfied. There is no allegation of fraud or malice or negligence or even of special damage.

As was said by Wilde C.J. in the case of *De Medina* v. *Grove* [1]:—

"there is no authority to show that the employment of either mesne or final process will furnish ground of action against the person employing it, unless he has acted maliciously and without probable cause."

Here there was no cause of action in the respondent. On the face of his own pleadings his action was hopeless and in the circumstances the statement of claim should have been struck out and the action dismissed.

I would allow the appeal with costs.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred.

Appeal allowed.

Solicitors: *Skrine & Co.; Lovelace & Hastings.*

PUBLIC PROSECUTOR v. TAN KING HUA

[R.Cr.J. (Lee Hun Hoe J.) September 9, 1965]

[Sibu — Criminal Revision No. 5 of 1965]

Criminal Law and Procedure — Sentence — Youthful offender — Matters to be taken into consideration in assessing sentence.

In this case the magistrate had sentenced the accused who was 16 years of age to 1 year's imprisonment for theft. The accused had a previous conviction also for theft, for which he had been committed to the Sibu Boys' Club and Hostel, which is an approved institution.

Held: everything reasonable should be done to avoid sending a youthful offender to prison if other suitable punishment is available and therefore in this case the sentence of imprisonment must be set aside and the accused committed to the Sarawak Boys' Home for two years.

CRIMINAL REVISION.

Lee Hun Hoe J.: As a result of information received from the assistant probation officer, Sibu I called for and examined the record of this case to satisfy myself as to the correctness, legality or propriety of the finding, sentence or order recorded or passed and as to the regularity of the proceeding.

Accused is only 16 years of age and is the issue of a Chinese father and an Iban mother. He was brought up by his parents in Binatang. On 5th August, 1964, when he was 15 years of age he was convicted in the police court, Binatang for an offence of theft under section 379 of the Penal Code. Because of his antecedents and age the magistrate transferred his case to this court under section 241 of the Criminal Procedure Code with a view of having the offender committed to custody.

Having read the report of the assistant probation officer and heard him this court ordered accused to be committed to the Sibu Boys' Club and Hostel which is an approved institution for a period of two years subject to the supervision of the assistant probation officer, Sibu. Although there is a warder in charge of this institution not very strict discipline was imposed on those who stayed there.

However on 5th July, 1963 during his stay in the institution he stole a bicycle while he was in the town. On 8th July, 1963 he was charged and convicted by the district court, Sibu for an offence under section 379 of the Penal Code. In view of his antecedents the learned magistrate sentenced him to a year's imprisonment.

I consider that the learned magistrate was wrong to impose a sentence of imprisonment in this case in view of the accused's age. Where a youthful offender is involved it is advisable for magistrates to take advantage of the probation service. Had he called for a report from the assistant probation officer, Sibu he would probably have taken a different course.

Youthful offenders should be treated with sympathy and understanding. In most cases they get into trouble because of poor family upbringing and lack of proper control.

There are provisions in the Criminal Procedure Code for dealing with youthful offenders and advantage should be taken of those provisions. The main consideration in dealing with a youthful offender must always be to help him to become a good and useful citizen. To allow him to mix with hardened criminals in his early life would cause him harm in his later life. Everything reasonable should be done to avoid sending such an offender to prison if other suitable punishment is available.

Since he did not appreciate his stay at the Sibu Boys' Club and Hostel then he should be sent to the Sarawak Boys' Home, Kuching, where very strict discipline is imposed and where he may become something useful.

Accordingly I set aside the sentence imposed by the district court, Sibu and order that Tang King Hua be committed to the Sarawak Boys' Home, Kuching for a period of two years as from today. As a result of this order the order of committal to the Boys' Club and Hostel made on 17th August, 1964 by the court is cancelled as from today.

Order accordingly.